

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 18 CR 3475 WJ

ROBERT DUNSWORTH,

Defendant.

5th UNOPPOSED MOTION TO CONTINUE TRIAL
AND MOTION DEADLINES

NOW COMES the defendant, Robert Dunsworth, by and through his counsel, Irma Rivas, Assistant Federal Public Defender, and moves the Court to continue the trial set for November 4, 2019.

As grounds for this request, counsel states:

1. Under the Speedy Trial Act, a trial must commence within seventy days of the Defendant's first appearance in District Court, the filing of an Information, or the return of an Indictment, whichever is later. 18 U.S.C. § 3161, subd. [c][1]. However, some delay can be excluded from this seventy-day requirement if the Defendant files pre-trial motions, if the Defendant is subjected to other, related proceedings, or if the District Court determines that the ends of justice will be served by granting the requested continuance. 18 U.S.C. § 3161, subd. [h][1][D], [h][1][B] and [h][7][A]. However, in order to justify a continuance based on the ends of justice, the record must contain a detailed explanation for why the mere occurrence of the event identified by the party seeking a continuance results in the need for additional time.

United States v. Toombs, 574 F.3d 1262, 1271 (10th Cir. 2009).

2. The defendant Mr. Dunsworth was arraigned in this case on January 8, 2019 before United States Magistrate Judge Karen B. Molzen on the charge of Possession of a Firearm by a Felon. Mr. Dunsworth is in the custody of the United States Marshals and housed at the Santa Fe County Adult Detention Center.

3. Discovery in this case was received January 16, 2019. Additional items of discovery were received on March 11, 2019. Mr. Dunsworth's criminal history is an issue, which took some time to sort out. However, further investigation is needed and an unopposed request for a Form 13 pre-plea probation report will be requested. Further, review of this case indicates that a motion to suppress may be appropriate to file in this case. Moving forward on November 4, 2019 would not give counsel sufficient time to complete these factual and legal inquiries and to therefore allow Mr. Dunsworth to make an informed decision on the resolution in this case. Mr. Dunsworth's, through his counsel, will request a form 13 pre-plea probation report and will file a motion to suppress in this case. Counsel for defendant will require more time to complete this investigation and preparation.

4. Mr. Dunsworth agrees, by the filing of this motion, that the period of continuance will not be included in the calculation of time within which this cause must be disposed pursuant to the Speedy Trial Act. 18 U.S.C. §3161(h)(7)(A). Failure to grant such a continuance would likely result in a miscarriage of justice. *United States v. Toombs*, 574 F.3d 1262, 1268 (10th Cir. 2009).

5. Defense counsel also respectfully requests a continuance of motion deadlines.

6. Assigned Special Assistant United States Attorney Thomas Outler does not oppose this continuance.

WHEREFORE, defendant Robert Dunsworth requests that the Court continue the trial of his cause for 60 days, or as long as the court finds appropriate.

I HEREBY CERTIFY THAT on the 21st Day of October 2019, I filed the foregoing electronically through the CM/ECF system, which caused SAUSA Thomas Outler to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
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/s/ *filed electronically*.
IRMA RIVAS, AFPD
Attorney for Defendant

filed electronically